

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3845 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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MAVJIBHAI POPATBHAI SOLANKI

Versus

A R DAVE OR HIS SUCCESSOR

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Appearance:

MS SADHANA SAGAR for Petitioner

MR Laxmn Pujari, ASSTT. GOVERNMENT PLEADER

for Respondent No. 1

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 06/12/1999

ORAL JUDGEMENT

The petitioner was appointed as a daily  
wager sweeper cum peon, after formal interview, in the  
office of the Director of Pension and Provident Fund,  
Ahmedabad. The petitioner worked continuously till

20.4.93 when he was terminated. Then the petitioner filed this petition in this Court for quashing and setting aside the decision of the respondent to terminate the services of the petitioner. This court, by its ad-interim order dated 22.6.93 allowed the petitioner to work as a daily wager on the strength of the appointment reflecting from the certificate dated 9.12.89. Thereafter, by the order dated 17.8.93, the interim order was made absolute to continue till the final disposal of this petition.

2. The main contention of the learned advocate for the petitioner is that on the basis of the Government circular dated 26.12.80, the petitioner's services are required to be regularised. In para-2 of the said circular, it is mentioned that whenever any part-time employee has continued for three years, head of the department should make efforts as per prescribed recruitment rules and procedure for filling the posts to absorb such incumbent in regular post. After terminating the services of the petitioner, the respondent intended to fill up the vacancy by another part-time employee. Hence, this petition has been filed by the petitioner praying that the action of the respondent is arbitrary and against the circular dated 26.12.80 of the Government of Gujarat. The learned advocate for the petitioner also relied on the decision of this Court in the case of B.C.Wadhwana vs. Director General of Police and another reported in 1998(3) GLR, 2041 wherein the respondents have been directed to absorb the petitioner as full time sweeper in the regular cadre of class IV employee with all consequential benefits from the date of filing of the petition.

3. After hearing the learned advocate for the petitioner and the learned A.G.P. Mr. L.R.Pujari present in the Court, the judgment was dictated in the open court. Lateron, Mr. Harsurkar, learned Additional Government Pleader and learned A.G.P. Mr. Pujari appeared and requested for making mention in the matter. He was allowed to mention. Then he started to argue that the single Judge of this Court has no jurisdiction to pass general orders directing the authorities to appoint the petitioner as the Supreme Court has directed in one of the cases. The High Court should direct the authority concerned to consider the appointment or promotion of the person concerned. He also contended that the Single Judge of a High Court has no jurisdiction to pass general orders directing the Government authorities to appoint

any person which can be done only by a Division Bench hearing the public interest litigation and at the most the authorities can be directed to consider the case of the petitioner concerned for appointment or promotion. He also informed the Court that an LPA has been filed against the judgment relied on by the other side. Of course, the Division Bench of this Court has not passed interim orders. He also requested to consider his contentions in the judgment. Hence, the following significant questions arise for decision.

- A. Scope of jurisdiction of High Court Judge.
- B. Concept of substantial justice.
- C. General direction to authority/State Government by a Single Judge or by a Division Bench.

A. Jurisdiction of High Court Judge:

At the outset, I may point out that the jurisdiction has been misconstrued by misinterpretation. A High Court Judge is appointed for a High Court of the State under Constitution of India. He is entrusted with the territorial jurisdiction of the State concerned. Jurisdiction of a Judge of a High Court has been given to exercise different powers by the Constitution of India and different statutes. He does not depend on the mercy of any person or authority to exercise his jurisdiction nor he is helpless. Unless authority gives him the powers, he will not exercise his power. A High Court Judge having been appointed under the Constitution of India is entrusted with the powers to issue directions, orders, or writs including writs in the nature of habeas corpus against any private person or Government, Authority, mandamus commanding any authority or Government or prohibition directing not to do any particular act, quo warranto directing appointment of any person under Government Authority to be invalid or illegal and certiorari quashing any order or judgment of any court below or authority under Article 226 of the Constitution or to have general superintendence over all subordinate courts including District Judges, Sessions Judges, City Metropolitan Courts and all Tribunals including Service Tribunals, Education Tribunals, Revenue Tribunals, Appellate Income Tax Tribunal, even Central Administrative Tribunal under Article 227 of the Constitution. He is also empowered to exercise his powers of appellate jurisdiction against the conviction and sentence of life imprisonment and confirmation of death sentence awarded by Sessions Court, revisional jurisdiction including the powers of appellate court,

withdrawing any trial and try himself or transfer to any other court, bail jurisdiction under the Code of Criminal Procedure, while in Code of Civil Procedure, he is entrusted with the powers of appellate court, revisional court. High Court Judge is also empowered to exercise original jurisdiction in certain cases. Some times, High Court Judge has to pass orders striking legislative enactment. He can exercise his powers on written or oral application or petition, post card, a telegram, even on a press report in the newspapers. He can also exercise his power suo motu even if there is no application therefor by any person. He can exercise his power while sitting in the court room, his chamber, residence, road or even on railway track. We are aware of the exercise of power by one High Court Judge who exercised his power at the railway platform. Justice Sharaf of Allahabad High Court passed orders on the road outside Allahabad city for certain directions to the administration. The Chief Justice is supposed to distribute or allocate the court business to the Judges of the Court in accordance with Rules of the Court and Rules of the Court are made by the Judges of the High Court for facilitating the distribution of the work to different Benches of the Court and those Rules are amended from time to time by the Judges of the Court. In Allahabad High Court, before the Division Bench, a case was listed for hearing and that bench was not dealing with the hearing of that type of cases nor the particular case was allotted to that bench. A question was raised by the learned advocate for the petitioner that this Bench has no jurisdiction to hear the case as this Bench is not allotted to hear such cases. Neither such cases nor a particular case has been allotted by the Chief Justice. The Bench overruled the contention of the learned advocate for the petitioner holding that the Bench has jurisdiction to hear every case and even though no such allocation of such case is entrusted by the Chief Justice and no party is entitled to get hearing of his case before any particular bench of his choice. Even if the case was listed before a wrong Bench, the Bench has jurisdiction to decide the same. No party is entitled to say that this case should be decided by a particular bench. Thus, the High Court Judge if entrusted with a particular jurisdiction either by the Constitution of India or by any enactment or statute, that power can be exercised by the High Court Judge at any place within the territory of the State at any time, even odd hours or mid-night. No orders can be challenged on the ground that the order was passed at road or railway station or different places from the court room or during night not in working hours. If any Judge dealing with bail applications pertaining to minor

offences hears the bail applications pertaining to major offence and passes suitable orders, or a Judge dealing with Single Judge bench writ petitions and takes cognizance and hears civil revision applications under section 115 of the Civil Procedure Code or Criminal Revision Application under sections 497 and 401 of the Criminal Procedure Code and passes suitable orders, those orders will not amount to without jurisdiction. If a Judge having a particular bail application and passes orders summoning officer of a State Government, S.S.P., District Magistrate, Police Commissioner, and even any Secretary to Government for a particular purpose, that power will be deemed to have been exercised under writ jurisdiction and that power cannot be said to be bad or without jurisdiction. If any Judge hearing writ petitions comes to the conclusion that the writ is not entertainable and Civil Revision Application lies, then on the request of the counsel, writ petition is permitted to be converted into revision application and the Judge passes suitable orders, after taking cognizance, then it cannot be said that the Judge was appointed for hearing a writ petition and not for Civil Revision Application and such orders passed by the Judge are not subject to challenge on the ground that he was not allotted the work of Civil Revision Application.

So far as suo motu powers are concerned, if a High Court Judge is entrusted with powers to exercise, they can be exercised not only on the application of any person, but also suo motu and it will be deemed that the Judge has power to exercise it.

Thus, a High Court Judge is presumed to be on duty for 24 hours and he is expected to work and pass suitable orders in the interest of justice, ex parte or bi-parte on even non-working days, non-working hours and non-working place, within the territory of the State. There is no binding or restriction of exercise of his powers for passing suitable orders at any time on any date at any place. But as self restraint is observed by the High Court Judges in ordinary manner in order to maintain norms of the Judiciary, the work is generally done at the place of sitting, court rooms in the High Court premises on the allocation of work by the Chief Justice though some times the Court working takes place in their chambers or at their residence.

#### B. Concept of substantial justice.

The paramount object of the whole judicial system is to dispense with substantial justice to the parties.

It is a well settled rule of law that whenever court is given discretionary power, to exercise it, the court should not exercise its discretionary power where substantial justice has been caused by the court below or authority. The courts are required not to interfere with the decision of the court below/authority merely on technicalities of law, even though the orders passed by the court below or authorities are illegal or without jurisdiction. In the same manner, if injustice has been caused to any of the parties, in the decision of the court below or authority due to either wrong procedure adopted therefor or violation of natural justice or even in violation of legal bar or perverse finding, court should exercise its jurisdiction in interfering with the decisions or orders of the court below or authority. Some times, orders have to be passed on equitable grounds and in order to dispense with justice to parties.

C. General directions to the State  
Government by a High Court, by a Bench in  
the PIL.

Public interest litigation is of such type of litigation wherein general direction to Government or Authority is sought in the public utility at large. There is no binding that any aggrieved party should come for this purpose. Any citizen has a right to file a writ petition for interest of general public at large. If such a petition is filed by any aggrieved party, then it does not come within the purview of public interest litigation. Usually public interest litigation is heard by a Division Bench consisting of two Judges of the Court, meaning thereby that the public interest litigation is not entertainable by or at the instance of any aggrieved individual or party or association. But it does not mean that a Single Judge hearing writ petitions has no power to issue general directions for the larger interest. In a particular case, if it is considered just and proper in the facts and circumstances of any case and that is not against any rule of law or in violation of statutory provisions of law, the Single Judge is fully entitled to and empowered to exercise his power and to pass general direction to the State Authorities. Not only the learned Single Judge, but the Division Bench entrusted with public interest litigation is empowered to exercise powers in the interest of justice for issuing general directions to the administration for supplying clean water, for drinking and for cleanliness of dirty material on road sides, for making available non-polluted

atmosphere and environment etc. High Court Judge is not supposed to wait for a PIL for passing orders in the larger interest of the society. In particular facts and circumstances and in the interest of justice, the Single Judge or a Division Bench can exercise this power in the writ jurisdiction issuing general directions to the authorities concerned. In some high Courts, cognizance of contempt proceedings is taken by a Division Bench, but it does not mean that some offence is committed in the court room in presence of a Single Judge or a Single Judge finds disobedience or flouting of court's orders, the Single Judge should wait for some application for initiation of contempt proceedings for any person. For taking cognizance of the contempt, Single Judge of High Court is entitled to take necessary action then and there. The Division Bench hearing contempt matters is meant for hearing or taking cognizance on the application moved by the person concerned. Thus, if a Judge finds some disobedience of court's order by any of the parties, or any offence is committed by any person, is empowered to take legal action and take cognizance of the contempt and punish that person for the contempt in accordance with law. It is misconstrued and misinterpreted that the Single Judge cannot issue general direction to any Government Authority in a writ jurisdiction which could be issued by the Division Bench dealing with public interest litigation and cannot take cognizance of contempt and punish contemner which are cognizable by a Division Bench dealing with contempt matters.

Thus, a Single Judge of the High Court is fully empowered to issue general directions to the authority concerned on the basis of the facts and circumstances in the case concerned even for appointment or promotion. If a High Court Judge finds a prima facie case for appointment or promotion from a deemed date, and a direction is issued to department for consideration of appointment or promotion, he will be presumed to have insisted or persuaded a party for further litigation as all of us know that result of such direction comes in negative, hence further litigation. In order to shorten or void further litigation, direction for appointment or promotion to the authority would be the best discretion of the Judge, if the case of appointment or promotion is established in the circumstances of the case.

4. No affidavit-in-reply has been filed to controvert the assertions made in this petition. The learned Assistant Government Pleader could not controvert

the assertions made in the petition. He contended that the petitioner was appointed on daily basis, while the case law relied on by the learned advocate for the petitioner is in respect of a part-time sweeper and hence the case law relied on by the learned counsel for the petitioner is not applicable in the present case.

5. I have carefully considered the submissions made on behalf of the parties and perused the relevant record. As the petitioner was appointed by an order dated 21.8.88 and he completed three years on 21.8.91. The petitioner's services were directed to be terminated by an order dated 20.4.93 and the petitioner is still working in the department as a sweeper cum peon on the basis of the interim order passed by this Court dated 22.6.93. The petitioner has already completed more than twelve years in the service and the case of the petitioner is on better footing and the interim order after hearing the parties was made absolute. If the petitioner is ousted from service after about 12 years, injustice would be caused to him. Hence, the petitioner is also entitled for the relief on the equitable grounds. This Court has also directed the Chief Secretary, Government of Gujarat for the strict compliance of the aforesaid decision rendered by this Court, however, it is unfortunate that the petitioner has not been still regularised in service in the case of B.C.Wadhwa (supra).

6. In the facts and circumstances of the case and in view of the decision of this Court, the petitioner is required to be regularised and absorbed in regular cadre of class IV employee and the respondent is required to be directed for the same. Accordingly, this petition deserves to be allowed.

7. Accordingly, this petition is allowed. The respondent is directed to forthwith regularise and absorb the petitioner in regular cadre of class IV employee as peon cum sweeper with all consequential benefits. The order of termination dated 20.4.1993 is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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